

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6919 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SALIM ABDUL SAMAD SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR MA BUKHARI, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 21/12/1999

ORAL JUDGEMENT

#. Commissioner of Police, Baroda City, Baroda,
passed an order on 26th March, 1999, in exercise of
powers under Section 3(1) of the Gujarat Prevention of
Anti Social Activities Act, 1985 ("PASA Act" for short),
detaining the petitioner under the provisions of the PASA

Act.

#. In the grounds of detention, the detaining authority took into consideration three offences registered against the petitioner under various sections of Indian Penal Code. The detaining authority also took into consideration statements of three anonymous witnesses whose identity has not been disclosed. The authority recorded a subjective satisfaction about the petitioner being a 'dangerous person' as defined under the PASA Act. The detaining authority also recorded a subjective satisfaction for the need for exercise of powers under Section 9(2) of the PASA Act. While exercising these powers, the detaining authority recorded that the statements made by the witnesses and the fear expressed by them qua the petitioner in respect of their person and property is found to be correct and genuine.

#. The petitioner/detenu challenges the order of detention by this petition on various counts.

#. Ms. Subhadra Patel, learned advocate for the petitioner, has restricted her arguments to two grounds. The first ground is that the detaining authority has passed the order on basis of extraneous and irrelevant material which was not on record and which is factually not correct. The order, therefore, would stand vitiated. Her another fold of argument was that there is a delay in passing the order of detention. She submitted that, admittedly, the statements were verified by the detaining authority on 14th March, 1999 whereas the order was passed on 26th March, 1999. There was, therefore, a gross delay of about 12 days. The subjective satisfaction recorded by the detaining authority for immediate need of preventing the petitioner from continuing his illegal activities and, therefore, the need for detaining the petitioner under the PASA Act does not appear to be genuine as the conduct of the detaining authority reflects otherwise. The detention would, therefore, be bad in law on that count also. She submitted that the petition may, therefore, be allowed.

#. Mr. M.A. Bukhari, learned Assistant Government Pleader has opposed this petition. He submitted that the causal connection between the incident and the order of detention cannot be said to have been snapped. The delay is not inordinate and, therefore, it may not be taken as sufficient to vitiate the order of detention. He, however, had to concede that after the verification by the detaining authority, the order was passed on the 12th day and that the detaining authority has not, in the

affidavit in reply, explained this lapse of 12 days between verification and passing of order. As regards the other ground, Mr. Bukhari submitted that, it is true that in the affidavit in reply, the detaining authority has stated that the petitioner continued his anti-social activities prejudicial maintenance of public order even after being released on bail. This fact, he conceded, is not borne out from the record.

#. Considering the rival side contentions, if paragraph 8 of the affidavit in reply is read, it is very clear that the detaining authority was, while passing the order, influenced by the fact that the detenu has continued his illegal and anti-social activities even after being released on bail. This can be seen from paragraph 8 wherein he states: "with reference to paragraph 10 of the petition, I say that after the release of the petitioner on bail in connection with the last offence, he has continued his anti-social activities and criminal activities prejudicial to the maintenance of public order. Therefore, on receipt of the relevant materials in the above respect, the same was studied, investigated and carefully considered and, thereafter, after following necessary procedure, the order of detention was passed against the detenu". To consider whether the above consideration which weighed with the detaining authority was factually correct or not, the grounds of detention are required to be perused. The grounds of detention indicate three offences registered against the petitioner and Mr. Bukhari states that the first offence, namely, Baroda City Police Station C.R.-I No.364/98 relates to an offence dated 14th November, 1998; the second offence, namely, Baroda City Police Station C.R. No.31/99 relates to 6th February, 1999; and the third offence with Sayajigunj Police Station C.R. No.35/99 relates to some time about eight months prior to 6.2.1999. The incidents quoted by the anonymous witnesses relate to 5th December, 1998, 28th December, 1998 and 17th January, 1999. Now, the most important aspect is that, admittedly, the detenu was released on bail on 9th March, 1999. Thus, it is very clear that there is no offence registered or unregistered indicated against the petitioner which is subsequent to his release on bail and, therefore, the observation of the detaining authority that the detenu continued his illegal and anti-social activities act after his release on bail is factually not correct. Although the grounds of detention do not indicate that the authority took into consideration the fact that the detenu had continued his nefarious activities even after being released on bail, the affidavit candidly states that this factor was

considered by the detaining authority and, therefore, the order was passed. The affidavit in reply also does not indicate any such offence which may connect the petitioner and which can be related to a date subsequent to his release on bail.

6.1 From the tenor of the language employed in the affidavit in reply (paragraph 8), it is very clear that the detaining authority permitted itself to be influenced by the fact that the petitioner was involved in anti-social and criminal activities which are prejudicial to the maintenance of public order even after his release on bail in connection with the last offence registered against him and, therefore, on receipt of the relevant papers, the order of detention was passed. The authority has, therefore, taken into consideration a factor which is non-existent and factually incorrect. This would reflect that the order is passed in routine and mechanical manner which would vitiate the entire order of detention. The petitioner, therefore, deserves to be allowed on this ground alone.

#. Ms. Patel does not press for a verdict on the ground of delay.

#. In view of the above discussion, the petition deserves to be allowed and is hereby allowed. The order of detention dated 26th March, 1999, in respect of the petitioner-Salim Abdul Samad Shaikh, is quashed and set aside. The petitioner-detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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